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Income Tax Deductions for Medical Expenses

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rights secured to him by any law providing for the equal civil rights of citizens of the United States or of all persons within the jurisdiction of the United States".[67] This statute was intended to supplement the Fourteenth Amendment and its constitutionality has been upheld.[68] It was initially construed to give a right to removal because of local prejudice.[69] The Supreme Court subsequently held it to apply only to cases where the defendant was unable to enforce his civil rights because of a state statute, and not where this was prevented by administrative or judicial action.[70] Local prejudice has been expressly held not to be within the statute.[71] In *Virginia v. Rivers* the Supreme Court held that a defendant cannot know that the equal protection of the laws will not be extended to him until the trial has taken place.[72] However this disregards two of the fundamental principles of venue, *i.e.,* that when there is sufficient belief to warrant the improbability of a fair and impartial trial in a particular locality the situs will be changed, and that it is never necessary to have an experimental trial to determine the existence of prejudice. It is to be hoped that the Supreme Court, in view of its concern with civil liberties, will restore the removal statute to its original function, so that in the event that a state is unable to give a fair and impartial trial to an accused, a federal court will.

THEODORE KRIEGER.

INCOME TAX DEDUCTIONS FOR MEDICAL EXPENSES

The advent of war, coupled with the necessity of extraordinary governmental expenditure, has brought increasing consciousness of the necessity to finance and control our national economy through tax legislation. Under the pressure of group controversy, pressure politics, and lobbies for selected interests, each particular law achieves its passage and represents a compromise between various opposing forces. Moreover, it very often happens that there is a last minute rush provoked by national urgency to meet the needs of emergencies. The result is invariably some progressive measures interspersed with

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[67] U. S. CODE (1934) tit. 28, § 74.

[68] *Ex parte* Virginia, 100 U. S. 339 (1879).

[69] State v. Dunlap, 65 N. C. 491 (1871).

[70] Kentucky v. Power, 201 U. S. 1 (1906); Gibson v. Mississippi, 162 U. S. 565 (1896); Bush v. Kentucky, 107 U. S. 110 (1882); Virginia v. Rivers, 100 U. S. 313 (1879); State of New Jersey v. Weiberger, 38 F. (2d) 298 (D. C. N. J. 1930).

[71] Commonwealth v. Millen, 289 Mass. 441, 194 N. E. 463 (1935); Lewson v. Superior Court, 12 F. Supp. 812 (N. D. Cal. 1935); California v. Chue Fan, 42 Fed. 865 (C. C. N. D. Cal. 1890); Texas v. Gaines, 23 Fed. Cas. 869, No. 13847 (C. C. W. D. Tex. 1874).

[72] 100 U. S. 313 (1879).

ill-considered or poorly thought out sections. The inevitable effect is nugatory of the intended consequences. It is interesting to show how hasty legislation presents a needless problem of interpretation to the practitioner.

The Internal Revenue Code embodies the existing federal income tax law. Its first enactment took place February 10, 1939. No new law was embodied therein, the statute being confined to codification of existing law as contained in the Revenue Act of 1938, effective unrepealed sections of prior Revenue Acts, Revised Statutes relating to federal taxes, and miscellaneous internal revenue laws. All subsequent enactments have evolved as amendments to the basic code, and embodied provisions contained in the Public Salary Tax Act of 1939, the Revenue Acts of 1939, 1940, 1941, 1942, the Current Tax Payment Act, and most recently the Revenue Act of 1943. This latter was enacted over the President's veto to become generally effective for calendar years beginning January 1, 1944. Pursuant to the desire to effectuate efficiency in administering the law, authority is conferred upon the Commissioner of Internal Revenue to issue interpretive regulations.[1] The current regulations issued by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, are designated as "Regulations 111",[2] and are codified as Title 26, Part 29, of the Code of Federal Regulations. Prior regulations are superseded, and Regulations 111 became effective as to all taxable years beginning on or after January 1, 1942.

The particular section of the Internal Revenue Code to be analyzed relates to deductions from gross income for *medical, dental, etc.* expenses.[3]

> Deduction is allowed for expenses paid during the taxable year for medical care of the taxpayer, his spouse, or a dependent of the taxpayer, not compensated for by insurance or otherwise (including hospitalization insurance), if such expenses exceed 5% of the taxpayer's net income (computed without this deduction). The amount deductible is only the excess over this 5 per cent.
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> On a joint return, the 5 per cent is based on the aggregate net income of the husband and wife.
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> The maximum allowable deductions on a *joint return,* or the return of a *head of a family* is $2500. The maximum deduction on returns of *all other individuals* (including separate returns of husband and wife) is $1250. on each return.
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> The term "medical care" is broadly defined to include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease or for the purpose of affecting any structure or function of the body, including amounts paid for accident or health insurance.[4]

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[1] General statutory authorization of the Commissioner's regulations is found in Sections 62 and 3791 of the Internal Revenue Code. Certain portions of the regulations derive specific authority from other Code sections.

[2] Released Oct. 28, 1943.

[3] INT. REV. CODE § 23(x)—1.

[4] 1944 U. S. MASTER TAX GUIDE, C. C. H. STANDARD FEDERAL TAX SERVICE EDITION § 276b.; U. S. TREAS. REG. 111, § 29.23(x)1.

In order to more fully analyze the effect of the italicized phrases above, let us proceed to discover the meaning of each individual's status in the law. These may be found in those sections relating to personal exemptions. The law divides individual taxpayers as follows:

1. Single persons or married persons not living with husband or wife.
2. Married person living with husband or wife.
3. Head of family.

With regard to the second class noted above, Regulations 111 provide in part:

A husband and wife, if living together at the close of the taxable year, may elect to make a joint return . . . , that is, to include in a single return made by them jointly the income and deductions of each, even though one has no gross income. In such a case, the tax shall be computed on the aggregate income. The liability with respect to the tax shall be joint and several. If one spouse dies prior to the last day of the taxable year, the surviving spouse may not include the income of the deceased spouse in a joint return for such taxable year . . . .[5]

The following implications may be drawn from the foregoing. Where either spouse has deductions but no income, or deductions in excess of income, such deductions or net excess may be offset against the income of the other spouse by filing a joint return. However, if one spouse has neither income nor deductions no joint return may be filed. The term (Head of a Family) has never been defined in any of the Revenue Acts or the Code. The Regulations limit the classification to one who, pursuant to some legal or moral obligation, actually supports in one household, of which he is the head, one or more dependent persons over whom he exercises family control and who are closely related to him by blood, marriage, or adoption.[6]

It now becomes obvious that the three classifications previously enumerated are intended to be exclusive, and that individual taxpayers are of necessity grouped under one to the exclusion of the others. Therefore, a married person living with husband or wife, for the purposes of the law may not be considered a "head of a family" so as to claim his medical expense deduction under either classification, but must confine himself to the second classification noted above. Returning now to a reconsideration of the phraseology of the latter part of the medical expense deduction specifying maximum limitations, it is curious to note that joint returns filed allow married persons living together the $2500 maximum. However, a query is

[5] 1 CODE OF FEDERAL REGULATIONS § 29.51-1(b).
[6] 1944 U. S. MASTER TAX GUIDE, C. C. H. STANDARD FEDERAL TAX SERVICE EDITION § 31a.; U. S. TREAS. REG. 111, § 29.25-4.

now interposed with regard to married persons only one of whom has income and/or deductions. Since the spouses of such persons have no income or deductions and a joint return cannot be filed, it appears they are in the class referred to as *all other individuals.* Naturally, the effect is discriminatory. One cannot fail to observe that a "head of a family" who is including generally in his return only his own income and deductions is entitled to a $2500 maximum deduction, while the average married man with a wife or children dependent on him, whose wife has no income or deductions, being unable to file a joint return, is allowed only a maximum of $1250. This may well be due to faulty phrasing and was not so intended by the legislature. It would seem to call for reconsideration and correction at the earliest possible opportunity rather than to wait for judicial interpretation.

It is interesting to note that the New York State Income Tax Law which parallels the federal law in the respects discussed, has adopted verbatim the medical expense deductions, albeit providing for maximums of $1500 and $750 respectively.

MILTON G. HARRISON.

SUFFICIENCY OF COMPLAINT UNDER FEDERAL RULES—REVOLUTION OF OBJECTIVES IN PROCEDURE

In framing a system of pleadings, objectives must first be settled.[1] Efficacy hangs upon how closely these are adapted to the requirements of the economic and social system for which they are created.[2] The code system has proved inadequate because the courts failed to adapt it to the changing needs of litigation. Tracing the scale that measures sufficiency under the Federal Rules, three ideas stand out as dominant: Liberality, Simplicity, and Notice.

As for Liberality, poor statement should not preclude a remedy, since justice ought not be limited to lawyers or to those with facilities and dexterity in legalistics. Liberality depends upon the policy of the judges who apply the laws; express command in the rules is scanty.[3] The mandate that all pleadings should be construed as to do substantial justice is fundamental;[4] its spirit has been often repeated.

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[1] FEDERAL RULES OF CIVIL PROCEDURE, Rule 1: ". . . They shall be construed to secure the just, speedy and inexpensive determination of every action." *See* Yankwich, *Jurisdiction and Procedure of the Federal Courts* (1940) 1 F. R. D. 453, 463.

[2] *See* Yankwich, *op. cit. supra* note 1, at 490.

[3] *Ibid.*

[4] FEDERAL RULES OF CIVIL PROCEDURE, Rule 8f: "All pleadings shall be so construed as to do substantial justice." *Cf.* N. Y. CIV. PRAC. ACT § 275. Re-